

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 09 2004

OFFICE OF  
MANAGING DIRECTOR

Mr. Johnathan S. Marashlian  
The Helein Law Group, P.C.  
8180 Greensboro Drive, Suite 700  
McLean, VA 22102

Re: Request for Waiver and Refund of Fiscal Year  
(FY) 2003 Regulatory Fees  
Control No. 0309258835583001

Dear Mr. Marashlian:

This letter responds to your request dated October 1, 2003 for waiver and refund of FY 2003 regulatory fees filed on behalf of Touch America, Inc. and Touch America, Inc. (Debtor in Possession) (jointly, Touch America). In your petition, you state that on June 19, 2003, Touch America Holdings, Inc. and most of its subsidiaries, including Touch America, Inc., its telecommunications subsidiary, filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. As evidence, you have submitted court documents, including copies of the bankruptcy petitions, a Declaration in Support of Chapter 11 Petition and First Day Motions and Applications, and a Notice of Electronic Filing. Our records indicate that on September 24, 2003, the Commission received your FCC Form 159-W Regulatory Worksheet and payments totalling \$92,870.01, for pre-petition FY 2003 regulatory fees, and for post-petition FY 2003 regulatory fees.

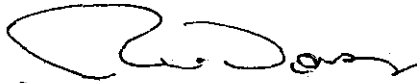
The Commission will grant waivers of its regulatory fees on a sufficient showing of financial hardship, and evidence of bankruptcy or receivership is sufficient to establish financial hardship. *See Implementation of Section 9 of the Communications Act*, 10 FCC Rcd, 12,759, 12761-62 (1995) (waivers granted for licensees whose stations are bankrupt, undergoing Chapter 11 reorganization, or in receivership). You have submitted evidence establishing that Touch America began Chapter 11 proceedings on June 19, 2003, and that these proceedings were ongoing on September 25, 2003, the final date for filing FY 2003 regulatory fee payments. Therefore we grant Touch America, Inc. and Touch America, Inc. (Debtor in Possession) a waiver of the FY 2003 regulatory fees in the total amount of \$92,870.01 and will refund your payment. A check, made payable to the maker of the original checks, and drawn in the amount of \$92,870.01, will be sent to you at the earliest practicable time.

Mr. Johnathan S. Marashlian

2.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reger', with a stylized flourish at the end.

Mark A. Reger  
Chief Financial Officer

0309258835583001

**The Helein Law Group, P.C.**

Telecommunications  
E Commerce  
Technology  
Corporate & Finance  
Trademarks  
Proprietary Rights  
Complex Litigation  
General Business Law

8180 Greensboro Drive  
Suite 700  
McLean, VA 22102

(703) 714-1300 (Telephone)  
(703) 714-1330 (Facsimile)  
mail@thlglaw.com

Management Consulting Group  
GTC Consultants, Inc.  
(703) 714-1307 (Telephone)

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FCC

2003 OCT -6 P 12:05

ACCOUNT PROCESSING  
FCC - DPT/RPT/TMT

Writer's Direct Dial Number

(703) 714-1313

Writer's E-mail Address

jsm@thlglaw.com

October 1, 2003

**HAND-DELIVERED VIA COURIER**

Office of the Managing Director  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-A625  
Washington, D.C. 20554  
ATTN: Regulatory Fee Waiver/Refund Request

RECEIVED - FCC

OCT -1 2003

Federal Communication Commission  
Bureau / Office

**Re: Touch America, Inc. and Touch America, Inc. (Debtor-in-Possession)  
Request for Waiver of Regulatory Fees and Refund of Payment**

Dear Sir/Madam:

On behalf of Touch America, Inc., FCC Registration No. 0005806468, and Touch America, Inc. (Debtor-in-Possession), FCC Registration No. 0009192204 (together, "Touch America"), and pursuant to Sections 1.1159 and 1.1166 of the rules of the Federal Communications Commission ("FCC"), 47 C.F.R. §§ 1.1159 and 1.1166, Touch America's attorneys hereby file this request for waiver and full refund of the 2003 Regulatory Fees paid by the company.

On June 19, 2003, Touch America Holdings, Inc. ("TA Holdings") and most of its subsidiaries, including Touch America, Inc.,<sup>1</sup> filed voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code to reorganize their business and financial structure.<sup>2</sup> The

<sup>1</sup> Touch America, Inc. is the telecommunications subsidiary of TA Holdings and holder of blanket domestic and global facilities-based and resold international Section 214 Authority. Following the Chapter 11 bankruptcy filing, Touch America, Inc. notified the Commission of its bankrupt status and obtained a new FCC Registration Number for Touch America, Inc. (Debtor-in-Possession) to reflect the company's bankrupt status. See FRN: 0005806468.

<sup>2</sup> See Chapter 11 Case No. 03-11915-MFW *et al.* (Bankr. D. Del.).

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Chapter 11 bankruptcy was precipitated by several factors, including but not limited to a drastic reduction in the company's ability to access capital through the capital markets, changes in the expectations of financial institutions, severe decline in TA Holdings' stock value, and other economic factors and market declines that generally afflicted the interstate, interexchange telecommunications industry following the "dot com" boom of the late 1990s. Attached at Exhibit A are court documents, including bankruptcy petitions, filed as proof of TA Holdings and Touch America's Chapter 11 bankrupt status.

It is the stated policy of the FCC to waive annual regulatory fees for companies that are undergoing Chapter 11 reorganizations. *See In re Implementation of Section 9 of the Communications Act*, 10 FCC Rcd. 12759, ¶ 14 (1995) ("[e]vidence of bankruptcy or receivership is sufficient to establish financial hardship"), *affirmed recently In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, Report and Order, MD Docket No. 03-83 (Rel. July 25, 2003) at ¶¶ 13 ("bankruptcy generally represents sufficient evidence of financial hardship to warrant granting a waiver").<sup>3</sup> Waiver and full refund of the regulatory fees paid by Touch America would promote the public interest by allowing Touch America to conserve its limited financial resources, continue to provide or maintain service to its existing interstate, interexchange telecommunications customers, and facilitate the negotiation and completion of the sale of Touch America's assets to a third party or parties.

As generally required by FCC policy regarding full payment of fees prior to filing requests for waiver, reduction or other relief, Touch America paid, in full, its 2003 Regulatory Fees on September 24, 2003. Attached hereto at Exhibit B is a copy of Touch America's Interstate Telephone Service Provider Regulatory Fee Worksheet Form 159-W and Remittance Advise Form 159. Also included at Exhibit A are copies of two checks. Two payments were submitted by Touch America to reasonably reflect the company's pre- and post-Chapter 11 bankruptcy petition FCC regulatory fee obligations.

For the reasons described above, by this letter and supporting documentation Touch America respectfully requests waiver of the FCC's 2003 Regulatory Fee requirement and a full refund of regulatory fees. Because Touch America is in the process of winding down its business and has limited ability to obtain funding, but still requires sufficient cash on hand to support the maintenance and provision of services to existing customers, Touch America requests expeditious grant of its waiver request and prompt refund of all regulatory fee payments.

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<sup>3</sup> Grant of Touch America's request for waiver and refund of 2003 Regulatory Fees would not result in a waiver and refund exceeding the \$500,000 cap.

Office of the Managing Director  
Federal Communications Commission  
September 29, 2003  
Page 3

Questions concerning this letter should be directed to Touch America's regulatory counsel at (703) 714-1313.

An additional copy of this filing is enclosed. Please date-stamp and return in the self-addressed, postage prepaid envelope.

Respectfully submitted,



Jonathan S. Marashlian  
The Helein Law Group, P.C.  
8180 Greensboro Drive, Suite 700  
McLean, VA 22102  
Tel: 703-714-1313  
Fax: 703-714-1330  
E-mail: [jsm@thlglaw.com](mailto:jsm@thlglaw.com)

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FCC

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ACCOUNT PROCESSING  
AR006-DPT/RPT/TMT

**EXHIBIT A**

FORM B1 <b>United States Bankruptcy Court District of Delaware</b>		<b>Voluntary Petition</b>
Name of Debtor (if individual, enter Last, First, Middle): <b>Touch America Holdings, Inc.</b>	Name of Joint Debtor (Spouse) (Last, First, Middle): N/A	
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): <b>See Attachment A</b>	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names): N/A	
Soc. Sec./Tax ID No. (if more than one, state all): <b>81-0540231</b>	Soc. Sec./Tax ID No. (if more than one, state all): N/A	
Street Address of Debtor (No. & Street, City, State & Zip Code): <b>130 N. Main Street Butte, MT 59701</b>	Street Address of Joint Debtor (No. & Street, City, State & Zip Code): N/A	
County of Residence or of the Principal Place of Business: <b>Silver Bow</b>	County of Residence or of the Principal Place of Business: N/A	
Mailing Address of Debtor (if different from street address): N/A	Mailing Address of Joint Debtor (if different from street address): N/A	
Location of Principal Assets of Business Debtor (if different from street address above):  Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nevada, Oklahoma, Oregon, Texas, Utah, Washington and Wisconsin		
<b>Information Regarding the Debtor (Check the Applicable Boxes)</b>		
<b>Venue (Check any applicable box)</b> <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.		
<b>Type of Debtor (Check all boxes that apply)</b> <input type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other _____ <input type="checkbox"/> Clearing Bank	<b>Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)</b> <input type="checkbox"/> Chapter 7 <input checked="" type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Sec. 304 - Case ancillary to foreign proceeding	
<b>Nature of Debts (Check one box)</b> <input type="checkbox"/> Consumer/Non-Business <input checked="" type="checkbox"/> Business	<b>Filing Fee (Check one box)</b> <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments Rule 1006(b) See Official Form No 3	
<b>Chapter 11 Small Business (Check all boxes that apply)</b> <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(c) (Optional)		
<b>Statistical/Administrative Information (Estimates only)</b> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
<b>Estimated Number of Creditors</b> 1-15      16-49      50-99      100-199      200-999      1000-over <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
<b>Estimated Assets</b> \$0 to \$50,000      \$50,001 to \$100,000      \$100,001 to \$500,000      \$500,001 to \$1 million      \$1,000,001 to \$10 million      \$10,000,001 to \$50 million      \$50,000,001 to \$100 million      More than \$100 million <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		
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<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>		<b>Name of Debtor(s):</b> Touch America Holdings, Inc.	
<b>Location</b> Where Filed: N/A		<b>Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)</b> Case Number: _____ Date Filed: _____	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)</b> Name of Debtor: SEE ATTACHMENT B		Case Number: _____ Date Filed: _____	
Relationship: _____		Judge: _____	

<b>Signature(s) of Debtor(s) (Individual/Joint)</b> I declare under penalty of perjury that the information provided in this petition is true and correct. If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7 I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, and choose to proceed under chapter 7 I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.	<div style="text-align: center;"><b>Signatures</b></div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>Exhibit A</b>          (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)  <input checked="" type="checkbox"/> Exhibit A is attached and made a part of this petition       </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <b>Exhibit B</b>          (To be completed if debtor is an individual whose debts are primarily consumer debts)          I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that (he or she) may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.       </div> <div style="border: 1px solid black; padding: 5px;"> <b>Exhibit C</b>          Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?  <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition  <input checked="" type="checkbox"/> No       </div>
x _____ Signature of Debtor	x _____ Signature of Attorney for Debtor(s)      Date: _____
x _____ Signature of Joint Debtor	Signature of Non-Attorney Petition Preparer
_____ Telephone Number (if not represented by attorney)	I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.
Date: _____	Printed Name of Bankruptcy Petition Preparer: _____
x _____ Signature of Attorney	Social Security Number: _____
Printed Name of Attorney for Debtor(s): Robert S. Brady, Esquire Paulina K. Morgan, Esquire Maureen D. Luku, Esquire Edward J. Kosmowski, Esquire Edmon L. Morton, Esquire Young Conway Sargent & Taylor, LLP The Brandywine Building 1000 West Street, 17 <sup>th</sup> Floor Wilmington, DE 19801 (302) 571-6600	Address: _____
Date: June 18, 2003	Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document: _____
Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the Debtor.	If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.
The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.	x _____ Signature of Bankruptcy Petition Preparer
x _____ Signature of Authorized Individual	Date: _____
Robert P. Gannon Printed Name of Authorized Individual	A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156
Chairman of the Board & Chief Executive Officer Title of Authorized Individual	
Date: June 18, 2003	
Date: _____	



<b>FORM B1 United States Bankruptcy Court District of Delaware</b>		<b>Voluntary Petition</b>																	
Name of Debtor (if individual, enter Last, First, Middle): <b>Touch America, Inc.</b>		Name of Joint Debtor (Spouse) (Last, First, Middle): N/A																	
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): <b>See Attachment A</b>		All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names): N/A																	
Soc. Sec./Tax I.D. No. (if more than one, state all): <b>81-0424592</b>		Soc. Sec./Tax I.D. No. (if more than one, state all): N/A																	
Street Address of Debtor (No. & Street, City, State & Zip Code): <b>130 North Main Street Butte, MT 59701</b>		Street Address of Joint Debtor (No. & Street, City, State & Zip Code): N/A																	
County of Residence or of the Principal Place of Business: <b>Silver Bow</b>		County of Residence or of the Principal Place of Business: N/A																	
Mailing Address of Debtor (if different from street address): N/A		Mailing Address of Joint Debtor (if different from street address): N/A																	
Location of Principal Assets of Business Debtor (if different from street address above): Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nevada, Oklahoma, Oregon, Texas, Utah, Washington and Wisconsin																			
<b>Information Regarding the Debtor (Check the Applicable Boxes)</b>																			
<b>Venue (Check any applicable box)</b> <input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District <input checked="" type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.																			
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Estimated Debts	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million											
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>											

Form B1, Exhibit C (9/01)

<p><b>Voluntary Petition</b> (This page must be completed and filed in every case)</p> <p><b>Name of Debtor(s):</b> Touch America, Inc.</p> <p><b>Relationship: Affiliates:</b></p> <p><b>Case Number:</b></p> <p><b>Date Filed:</b></p> <p><b>Relationship: Affiliates:</b></p> <p><b>Case Number:</b></p> <p><b>Date Filed:</b></p> <p><b>Judge:</b></p>		<p><b>Signature of Debtor(s) (Individuals)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p><b>Signature of Debtor(s) (Partnership)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p><b>Signature of Debtor(s) (Corporation/Partnership)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p><b>Signature of Attorney for Debtor(s)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p><b>Signature of Attorney for Debtor(s)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p>	
<p><b>Exhibit A</b> (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11) <input type="checkbox"/> Exhibit A is attached and made a part of this petition</p> <p><b>Exhibit B</b> (To be completed if debtor is an individual whose debts are primarily consumer debts) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that (he or she) may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. <input checked="" type="checkbox"/> I have informed the petitioner that (he or she) may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.</p> <p><b>Exhibit C</b> Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition <input checked="" type="checkbox"/> No</p> <p><b>Signature of Non-Attorney Petitioner</b> I certify that I am a bankruptcy petitioner as defined in 11 USC § 110, that I prepared this document for completion, and that I have provided the debtor with a copy of this document.</p> <p><b>Printed Name of Bankruptcy Petition Preparer</b></p> <p><b>Social Security Number</b></p> <p><b>Address</b></p> <p><b>Name and Social Security Numbers of all other individuals who prepared or assisted in preparing this document:</b> If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><b>Signature of Bankruptcy Petition Preparer</b></p> <p><b>Date</b></p> <p>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 USC §110; 18 USC §156</p>		<p><b>Signature of Debtor(s) (Individuals)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p><b>Signature of Debtor(s) (Partnership)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p><b>Signature of Debtor(s) (Corporation/Partnership)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p><b>Signature of Attorney for Debtor(s)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p><b>Signature of Attorney for Debtor(s)</b> I declare under penalty of perjury that the information provided in this petition is true and correct.</p>	

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Chapter 11
	)	
TOUCH AMERICA HOLDINGS, INC., <u>et al.</u>	)	Case No. 03-11915 ( )
	)	
Debtors.	)	(Joint Administration Pending)

**DECLARATION OF JERROLD P. PEDERSON IN SUPPORT OF CHAPTER 11.  
PETITIONS AND FIRST DAY MOTIONS AND APPLICATIONS**

Jerrold P. Pederson, pursuant to 28 U.S.C. §1746, hereby declares under penalty of perjury as follows:

1. I am the Vice Chairman of the Board of Directors and Chief Financial Officer of Touch America Holdings, Inc. ("Touch America Holdings"), a group holding company organized under the laws of the State of Delaware and a debtor in possession in the above-captioned chapter 11 cases. I am familiar with Touch America's day-to-day operations, business affairs, books and records.

2. On the date hereof (the "Petition Date"), Touch America Holdings and certain of its direct and indirect subsidiaries, (collectively, the "Debtors" or "Touch America"), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). In addition to Touch America Holdings, the Debtors include the following corporations and limited liability companies: Touch America, Inc. ("TAI"), Entech LLC, Touch America Intangible Holding Company, LLC, Touch America Purchasing Company, American Fiber Touch, LLC and Sierra Touch America, LLC.

3. The Debtors continue in the possession of their properties and the management of their businesses as debtors in possession pursuant to sections 1107 and 1108 of

the Bankruptcy Code. In order to enable the Debtors to operate effectively and avoid the adverse effects of their chapter 11 filings, the Debtors have requested various types of relief in "first day" applications and motions filed with the Court concurrently herewith (the "First Day Motions").

4. I submit this declaration (the "Declaration") in support of the Debtors' various First Day Motions. Any capitalized term not expressly defined herein shall have the meaning ascribed to that term in the relevant First Day Motion. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, my review of the relevant documents or my opinion based upon my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Declaration.

5. Part I of this Declaration describes the Debtors' background and businesses and outlines the circumstances surrounding the filing of their chapter 11 petitions. Part II sets forth relevant facts in support of the Debtors' various First Day Motions.

#### PART I

6. On June 19, 2003 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. No statutory committees have yet been appointed in these chapter 11 cases, and no trustee or examiner has been appointed.

8. Touch America Holdings, Inc. ("Touch America Holdings") was incorporated in Delaware on September 27, 2000. Touch America Holdings resulted from the reorganization of The Montana Power Company ("Montana Power"), a diversified electric and

natural gas business, to become Touch America Holdings, a stand-alone, publicly traded telecommunications business. In this reorganization, Montana Power merged with The Montana Power, L.L.C. ("MPLLC"), a wholly owned subsidiary of Touch America Holdings. On February 15, 2002, MPLLC was sold to NorthWestern Corporation, a South Dakota based energy company.

9. The telecommunications business that Touch America Holdings owns, and through which it operates, Touch America, Inc. ("TAI"), began its operations in 1983, primarily providing network construction and private line services to carrier and enterprise customers. As the telecommunications business rapidly expanded in the late 1990s, TAI also rapidly expanded.

10. At the present time, TAI develops, owns and operates a 21,000-mile fiber optic network, of which fifty (50) percent is lit, and provides broadband telecommunications services, including data and video transport, to customers throughout the United States. TAI currently serves over 8,500 customer accounts, including other communications service providers, banks, retail chains and governmental agencies. TAI provides these customers with a variety of telecommunications products and services, including private line services, ATM/Frame Relay Services and Internet Access.

11. The affiliates of Touch America Holdings that also filed for bankruptcy protection on the Petition Date are: (a) Entech LLC ("Entech"), a wholly owned subsidiary of Touch America Holdings, that holds indemnity and certain other obligations remaining after the sale of the non-utility energy businesses, (b) Touch America Intangible Holding Company, LLC ("Touch America Intangibles"), a wholly owned subsidiary of TAI, that holds intangible assets acquired in the course of constructing TAI's network, (c) Touch America Purchasing Company, LLC ("Touch America Purchasing"), a wholly owned subsidiary of TAI and a special purpose

entity created to purchase inventory related to the construction of TAI's network, (d) American Fiber Touch, LLC, a wholly owned subsidiary of TAI, created for the purpose of network construction (that has been completed) and on-going post-construction maintenance and (e) Sierra Touch America, LLC, another wholly owned subsidiary of TAI, whose purpose is certain, as yet, unfinished network construction and post-construction maintenance.

12. Like other telecommunications companies, Touch America's business has been affected by the prolonged United States economic downturn. The demand for fiber optic network capacity has been significantly lower than expected. Lowered demand has resulted in intense price competition, which, in turn, has reduced revenues and profits.

13. In addition, a substantial portion of Touch America's revenue is derived from service contracts with other telecommunications companies. As economic conditions have worsened, Touch America has found it increasingly difficult to collect payments from these customers. Due to the general industry upheaval, Touch America has also been unable to access capital markets.

14. The negative effect of industry-wide economic pressures has been exacerbated by a legal conflict with TAI's largest customer, Qwest International, Inc. ("Qwest"). TAI has a material dispute with Qwest regarding services that TAI and Qwest provided to each other under certain contractual arrangements related to TAI's June 30, 2000 acquisition from Qwest of wholesale, private line, long-distance, and other telecommunications services businesses. The dispute involves, among other things, costs that Qwest billed to TAI that TAI believes are invalid as well as revenue that TAI believes Qwest owes TAI for services TAI has provided. This multi-million dollar contractual dispute was ultimately referred to arbitration, and on March 24, 2003, the arbitrator issued an interim opinion and award, which awarded Qwest

\$59,600,000. On March 28, 2003, the New York Stock Exchange ("NYSE") suspended trading in Touch America Holdings stock and on May 14, 2003, the NYSE delisted Touch America Holdings.

15. The foregoing events and circumstances have required Touch America to evaluate its options for maximizing the value of its businesses and assets for the benefit of its creditors. Touch America has determined that the best way to obtain maximum value is to liquidate its assets through a chapter 11 proceeding.

16. To this end, Touch America has entered into an asset purchase agreement with 360networks Corporation, which is subject to higher and better offers and the approval of the Bankruptcy Court. Shortly after the Petition Date, Touch America will seek Court approval of the sale of Touch America's assets and the related bidding procedures for such sale.

17. In addition, prior to the Petition Date, Touch America determined that it was necessary to reduce its workforce in order to reduce expenses and preserve assets in the chapter 11 liquidation process. Thus, the number of Touch America employees was significantly reduced to those employees who are necessary for the administration of the bankruptcy cases and the completion of the sale process.

18. As of the Petition Date, Touch America Holdings had approximately \$10,000,000 in cash.

## **PART II**

19. Contemporaneously with the filing of their chapter 11 petitions, the Debtors have filed various motions and applications seeking entry of a number of orders (the "First Day Orders") that the Debtors believe are necessary to enable them to operate in chapter 11

with a minimum of disruption and loss of productivity. The Debtors respectfully request that the Court approve each of the following First Day Motions:

**A. Motion for Order Directing Joint Administration of Cases**

20. The Debtors request that this Court direct the joint administration of these chapter 11 cases solely for procedural purposes. For the reasons set forth herein and in greater detail in the motion seeking joint administration, the Debtors believe that, in light of their affiliated status and interrelated business operations, the joint handling of the administrative matters respecting these cases — including, without limitation, the use of a single docket for matters occurring in the administration of the estates and the combining of notices to creditors — will expedite these chapter 11 cases, render their administration more efficient and economic and alleviate the administrative burden on the Court and parties in interest.

21. Touch America Holdings, Inc. directly or indirectly wholly owns each of the other Debtors. The Debtors' business operations are interrelated with generally common officers and directors, who are familiar with the business affairs of each of the other Debtors. In light of the interrelationship and affiliations among the Debtors, I believe that the joint administration of these cases, solely for procedural purposes will serve the best interests of the Debtors' estates and creditors. In particular, the joint administration of these cases will avoid unnecessary costs and delay by eliminating duplicate filings with this Court, thereby facilitating the efficient and economic administration of the Debtors' estates.

**B. Application for Authorization to Retain and Employ Bankruptcy Management Corporation as Claims Agents for the Debtors**

22. The Debtors have filed an application seeking to retain Bankruptcy Management Corporation ("BMC") as their notice, claims and balloting agent in these cases, based on the corporation's extensive experience and knowledge in providing such services under



chapter 11 of the Bankruptcy Code. The Debtors seek to retain BMC pursuant to the terms and conditions detailed in the engagement letter between Touch America and BMC attached to the application, effective as of the Petition Date.

23. The Debtors selected BMC based on both its experience in handling large chapter 11 cases and the competitiveness of its fees. BMC is a firm that specializes in noticing, claims processing, balloting and other administrative tasks in chapter 11 cases. The Debtors wish to engage BMC to send out certain designated notices and to collect and monitor claims as agent for the Court.

24. Touch America believes that BMC's employment is in the best interests of Touch America's estates and its creditors. In addition, I have been informed that the Local Rules for the United States Bankruptcy Court for the District of Delaware require a claims agent to be retained in all cases in which there are more than 200 creditors. For all of the above reasons, Touch America proposes to engage BMC as its notice, claims and balloting agent in these chapter 11 cases.

**C. Motion for Authorization to Maintain Bank Accounts and Maintain Existing Cash Management System and to Continue to Use Existing Business Forms**

**a. The Bank Accounts**

25. It is my understanding that the Office of the United States Trustee for the District of Delaware has established operating guidelines for debtors in possession who continue to operate their businesses. These guidelines require chapter 11 debtors in possession to, among other things, close all existing prepetition bank accounts and open new, postpetition bank accounts. It is my further understanding that this requirement is designed to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent

an inadvertent postpetition payment of prepetition claims by preventing banks from honoring checks drawn prior to the filing of the petition.

26. Before the Petition Date, Touch America, in the ordinary course of its business, maintained a variety of bank accounts, including, but not limited to, payroll accounts, concentration accounts and operating accounts (collectively, the "Bank Accounts").

27. Touch America seeks relief from the United States Trustee's requirement that the prepetition Bank Accounts be closed and that new postpetition bank accounts be opened. If enforced in these cases, this requirement would disrupt Touch America's business and would impair its efforts to operate during the pendency of these cases.

28. The continued maintenance and use of the Bank Accounts will greatly facilitate Touch America's transition to chapter 11 operations. Thus, the Debtors request that Touch America be permitted to continue to maintain and use the Bank Accounts and, if necessary, to open new accounts.

29. Touch America requests that the Bank Accounts be deemed to be debtor in possession accounts, and that the Court authorize their maintenance and continued use, in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period. Touch America represents that if the relief requested herein is granted, it will not pay, and each of its banks will be directed not to pay, any debts incurred before the Petition Date, other than as specifically authorized by this Court.

**b. Use of Existing Business Forms and Checks**

30. To minimize expenses to its estate, Touch America also requests that it be authorized to continue to use all correspondence, business forms (including, but not limited to, letterhead, purchase orders, and invoices) and checks existing immediately prior to the Petition

Date (collectively, the "Business Forms"), without reference to its status as debtors in possession.

31. Parties doing business with Touch America undoubtedly will be aware, as a result of the size of these cases and the publicity associated with Touch America's bankruptcy filing, of Touch America's status as a chapter 11 debtor in possession. Changing the Business Forms would be unnecessary, burdensome to Touch America's estates, expensive and disruptive to its business operations. For these reasons, Touch America requests that it be authorized to use the Business Forms without being required to place the label "debtor-in-possession" thereon. Touch America will begin referencing "debtor in possession" on its checks as soon as practicable hereafter.

**c. Continued Use of Existing Cash Management System with Certain Modifications**

32. In the ordinary course of its business, Touch America employs a centralized cash management system (the "Cash Management System") for all its business operations. The significant components of the Cash Management System employed by Touch America are the following:

33. The Debtors' receivables generally are collected into a lockbox/general account (the "General Account") and various operational accounts (the "Operational Accounts"), each maintained at U.S. Bank. The Operational Accounts relate to specified aspects of the Debtors' businesses, such as payroll and purchasing. In addition, certain deposits relating to specific business segments are deposited into specific joint venture and trust accounts at U.S. Bank (the "Joint Venture Accounts"). On a daily basis, reports as to the balances, deposits and clearings for the General Account, Operational Accounts and Joint Venture Accounts are provided to the Debtors via electronic transmission from software provided by U.S. Bank. Funds

are then transferred between accounts to ensure that appropriate funds are maintained for the anticipated clearings associated therewith.

34. In addition to the General Account and Operational Accounts, certain of the Debtors' receipts relating to customers billed out of the Debtors' Highland Lakes billing system are deposited into an account at Wells Fargo Bank in Missoula, Montana (the "Wells Fargo Account"). As with the other accounts, the Debtors are provided daily information via telephone of the activity and balance of the Wells Fargo Account and excess balances are transferred electronically to the General Account. The Debtors also maintain an investment account at Wells Capital Management (the "Investment Account") in which they deposit the bulk of their investment funds.

35. Under the Debtors' Cash Management System, checks are generally issued from the Operational Accounts for obligations related to the specific accounts' designated purpose, as are all wire transfers and Automated Clearing House ("ACH") transactions. For example, all disbursements related to the Debtors' payroll obligations are issued from the payroll account either via check or ACH and the account is pre-funded on a bi-weekly basis from the other accounts while payments related to taxes and benefits are made from the General Account.

36. Finally, the Debtors maintain certain accounts related to the administration of their securities. The Debtors maintain two (2) preferred stock accounts (the "Preferred Stock Accounts") at Wells Fargo Bank. These accounts have been funded for the purpose of retiring certain of the Debtors' outstanding preferred securities. While the Debtors request a waiver from the requirement that the Preferred Stock Accounts be closed, the Debtors will not issue payments to security holders from the Preferred Stock Accounts on a postpetition basis.

37. The Debtors also maintain an account at Chase Manhattan Bank (the "Lehman Account") for the purpose of assisting new or existing shareholders in the purchase of their securities. Each month, money is collected from potential or existing shareholders who desire to purchase additional securities of the Debtors. At the end of each month, the funds are forwarded to Lehman Brothers to purchase the securities requested. Although the Debtors seek a waiver of the requirement that they close this account, they will not purchase additional securities for existing or potential shareholders postpetition.

38. The practices employed by the Debtors in administering the Cash Management System constitute their ordinary, usual, and essential business practices. The operation of Touch America's business requires that the Cash Management System continue during the pendency of these cases. Any disruption would have an adverse impact upon Touch America and would impair the ability to effectively operate postpetition. Moreover, as a practical matter, because of Touch America's financial structure, it would be extremely difficult to establish a new system of accounts and a new cash management and disbursement system without substantial additional costs and expenses to the estates and severe disruption to business operations.

39. In summary, requiring the Debtors to adopt a new, segmented cash management system at this critical stage in their cases would be expensive, would create unnecessary administrative problems and would be more disruptive than productive. The Debtors request authorization to continue using their existing Cash Management System in order to avoid disturbing the ordinary and usual conduct of Touch America's financial management.

The Debtors believe that maintenance of the Cash Management System is in the best interests of creditors and all other parties in interest.<sup>1</sup>

40. Touch America will continue to maintain records respecting all transfers between any of the Bank Accounts so that all inter-company transactions are accurately recorded.

**d. Interim Waiver of Investment Guidelines**

41. I have been informed by counsel that section 345(b) of the Bankruptcy Code requires a debtor in possession to insure that a depository institution post a bond or make a deposit of securities if a debtor in possession bank account is not federally insured. However, compliance with this collateralization requirement can be waived "for cause."

42. All of the bank accounts maintained by these Debtors are with depository institutions insured by the Federal Deposit Insurance Corporation (FDIC). The principal repositories of the Debtors' funds are Wells Fargo and U.S. Bank, two large institutions of longstanding repute in the banking community.

43. In the exercise of their business judgment, the Debtors believe that the funds of the estate are properly safeguarded when on deposit at its banks and thus, that the spirit of the collateralization requirement is satisfied.

44. It is the Debtors' present intent to seek from this court a finding that their banking arrangements either comply with or warrant relief from the bonding and collateralization requirements of the Bankruptcy Code.

<sup>1</sup> Certain of the Debtors' practices regarding receipts and allocations between its Bank Accounts may be modified slightly in accordance with the requirements of the Debtors DIP financing. To the extent approved, the necessary modifications to the Cash Management System are set forth in the credit agreement.

45. Meanwhile, the Debtors seek an interim waiver, pending a final hearing, to come into compliance with this collateralization requirement of the Bankruptcy Code. The Debtors submit that:

- a. the funds of the estate are properly safeguarded when on deposit with the financial institutions identified herein;
- b. no creditor or other pecuniary party in interest will likely oppose the interim relief sought;
- c. the pressures and time constraints inherent with the initiation of large chapter 11 proceedings such as this precludes the Debtor from obtaining the collateralization agreements customarily suggested by the United States Trustee at this early juncture of the case and, therefore, an interim extension of time to comply or otherwise move this Court for relief from the collateralization requirements is warranted.

**D. Motion for Authorization to Pay Prepetition Payroll, Payroll Taxes, Employee Benefits and Expenses**

**a. Prepetition Payroll and Related Expenses**

46. The Debtors' post-petition workforce includes approximately 160 employees (collectively, the "Employees"), none of whom are members of a union.

47. Because the Petition Date falls in the middle of a pay cycle, many of the Debtors' employees were owed or had accrued various sums for prepetition compensation ("Prepetition Compensation") and prepetition business expenses ("Prepetition Business Expenses"). In addition, as of the Petition Date, the Debtors had obligations relating to prepetition compensation for: (a) deductions taken from Employees' paychecks in order to make payments on behalf of the employees for or with respect to (i) benefit plans, (ii) 401(k) savings programs, (iii) charitable contributions, (iv) life insurance plans, (v) garnishments or support payments and (vi) other similar programs under which the Debtors deduct a sum of money from an Employee's paycheck and pay that amount to a third party (collectively, "Deductions") and

(b) withholdings from employees' paychecks on account of various federal and state income, FICA, Medicare and other taxes for remittance to the appropriate federal, state or local taxing authority (collectively, "Withholdings"). Prepetition Compensation, Prepetition Business Expenses, Deductions and Withholdings were due and owing as of the Petition Date because, among other things:

- a. the Debtors filed their chapter 11 petitions in the midst of their regular and customary payroll periods, as well as in the midst of their regular reimbursement cycle for Employee business expenses;
- b. certain checks issued to Employees prior to the Petition Date (including expense reimbursement checks) have not yet been presented for payment or have not yet cleared the banking system and, accordingly, were not honored and paid as of the Petition Date;
- c. the Employees have not yet been paid certain of their salaries, contractual compensation and wages for services previously rendered to the Debtors or have not yet been reimbursed for business expenses previously advanced on behalf of the Debtors; and
- d. certain other forms of compensation (including sick pay, vacation pay and holiday pay) related to prepetition services have not yet been paid to, or for the benefit of, the Employees because such amounts, although accrued in whole or in part prior to the Petition Date, were not payable at such time, but rather will become payable in the future in the ordinary course of the Debtors' businesses.

48. The Debtors believe that, in most cases, the amount of prepetition wages, salaries and contractual compensation owing to or on account of any particular Employee will not exceed the total of \$4,650 that I have been informed is a priority claim under the Bankruptcy Code. Nevertheless, to the extent that the Debtors may owe an aggregate amount exceeding \$4,650 in combined Prepetition Compensation, Prepetition Business Expenses, Deductions and Benefits to or on account of certain Employees, the Debtors seek authorization to pay those



amounts for all of the important reasons set forth above. I believe such payments are necessary under the present circumstances and will further the Debtors' efforts to maximize the value of their estates through a successful sale process. Accordingly, the Debtors request authority to pay all such amounts in the ordinary course of the Debtors' businesses, regardless of whether these amounts exceed the statutory priority amounts.

49. In addition, to avoid the serious liabilities that could result from the nonpayment of any withholding taxes, the Debtors seek authority to remit all Withholdings, including prepetition Withholdings collected on behalf of the Employees, to the applicable taxing authorities. It is my understanding that many federal, state and local taxing authorities impose personal liability on the officers and directors of entities responsible for collecting taxes from employees to the extent any such taxes are collected but not remitted. Thus, if the Debtors do not pay these amounts, the Debtors' officers and directors may be subject to lawsuits or even criminal prosecution on account of such nonpayment.

50. The Debtors seek authority, only with respect to those Employees still in the employ of the Debtors, to pay all (a) Prepetition Compensation, (b) Prepetition Business Expenses, (c) Deductions and (d) Withholdings attributable to the period prior to the Petition Date in accordance with the provisions of the Debtors' motion by which they seek to make such wage-related payments.

**b. Prepetition Benefits**

51. The Debtors maintain a number of employee benefit programs, including health, dental, life and disability insurance, a retirement program for their hourly and salaried Employees and other similar programs (collectively, the "Benefit Programs"). The contributions

to or benefits paid under the various Benefit Programs are referred to herein collectively as "Benefits."

52. As of the Petition Date, certain Benefits were owed but remained unpaid because certain obligations under the Benefit Programs accrued either in whole or in part prior to the Petition Date, but will not become payable in the ordinary course of the Debtors' businesses until a later date.

53. The Debtors seek authority, only with respect to those Employees still in the employ of the Debtors, to pay all prepetition Benefits that, as of the Petition Date, had accrued but remained unpaid and to provide Benefits to their terminated employees through the end of June 2003. The Benefits that the Debtors seek authority to pay include those owing under the following types of Benefit Programs:

(a) Self-Insured Programs. The Debtors provide medical, dental, vision and prescription benefits to the employees through self-funded plans (the "Self-Funded Plans") administered by Blue Cross Blue Shield of Montana and AETNA (third party administrators or "TPA"). Under the Self-Funded Plans, the Debtors fund the majority of health care costs from their general assets (which are paid through the TPA), with those employees electing coverage also making a contribution. Claims under the Self-Funded Plans are processed by the TPA and then paid either by reimbursing the employee or directly paying the employee's medical service provider. There is usually a short lag time, no greater than ten days, between the time a claim is submitted and the time a claim is paid. Thus, as of the Petition Date, the Debtors will be liable for claims under the Self-Funded Plans that have been submitted but not paid or that have accrued but have not been submitted. The Debtors seek authorization to pay the claims under the Self-Funded Plans due and owing in accordance with the Debtors' motion seeking to pay amounts.

(b) Third-Party Insured Programs. The Debtors also maintain certain insured benefit plans under which the Debtors, or the Debtors and the Employees, contribute to the payment of premiums for insurance or other coverage provided by third parties (collectively, the "Insured Plans"). The Insured Plans include among others: (i) long-term disability insurance; (ii) basic employee term life insurance; (iii) optional employee term life insurance; (iv) employee accidental death and dismemberment insurance and (v) dependents term life insurance.

(c) Company-Sponsored Benefit Programs. The Debtors also maintain certain other Benefit Programs under which the Debtors and the Employees, or the Employees, contribute to Benefits provided to Employees (collectively, the "Noninsured Programs"). The Noninsured Programs include: (i) a 401(k) savings plan and (ii) flexible spending accounts, which permit the payment of health care costs, daycare, child and dependent care costs on a pre-tax basis.

54. In addition, in order to enable key Employees to perform their jobs effectively, the Debtors must continue their corporate policy of permitting certain Employees to incur business-related expenses and thereafter seek reimbursement by submitting appropriate invoices or vouchers evidencing such out-of-pocket disbursements.

55. The Debtors seek to pay the above described employee compensation and benefits (including the payment of Prepetition Compensation, Prepetition Business Expenses, Deductions or Benefits) because any delay in such payment will destroy the Debtors' relationships with the Employees and impair workforce morale at the very time when the dedication, confidence and cooperation of these Employees is most critical to successfully conclude a sale of all or substantially all of the Debtors' operating assets.

**c. Non-employee Benefits**

56. As discussed previously, the Debtors terminated a significant number of their employees prior to filing for chapter 11 protection. The Debtors represented to these employees that their Benefits would be maintained through the end of June 2003. The Debtors seek this Court's authorization to honor this commitment and to continue Benefits for terminated employees through June 2003.

57. The Debtors also provide health and life insurance for certain non-employee directors and seek to continue to provide these Benefits. As with the employees, failure to pay these Benefits could negatively impact Touch America's relationships with the

directors at a time when their expertise and commitment is essential to Touch America and the chapter 11 sale process.

58. Finally, the Debtors seek to maintain the Benefits they currently provide to approximately twenty-eight (28) retirees. These retiree Benefits include health, vision and life insurance.

**d. Prepetition Processing Costs**

59. The Debtors also request that they be authorized, in the Debtors' sole discretion, to pay all costs incident to Prepetition Compensation and Deductions, such as processing costs and the employer portion of payroll-related taxes, as well as accrued but unpaid prepetition charges for administration of the Benefit Programs (collectively, the "Prepetition Processing Costs"). The Debtors believe that they are current in payment of Processing Costs, but request that they be permitted to pay any such costs that are accrued but unpaid as of the Petition Date..

60. Payment of the Prepetition Processing Costs is justified because the failure to pay any such amounts might disrupt services of third-party providers with respect to Prepetition Compensation, Deductions and Benefits. By paying the Prepetition Processing Costs, the Debtors may avoid even temporary disruptions of such services and thereby ensure that the Employees continue to receive compensation and benefits without interruption.

**e. Authority for Banks to Honor Checks Issued to Pay Prepetition Compensation, Prepetition Business Expenses, Deductions, Withholdings, Benefits and Prepetition Processing Costs**

61. The Debtors further request that all applicable banks and other financial institutions be authorized and directed, when requested by the Debtors, in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' accounts

in respect of Prepetition Compensation, Prepetition Business Expenses, Deductions, Withholdings, Benefits and Prepetition Processing Costs, whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that these checks are drawn on identifiable payroll and disbursement accounts and can be readily identified as relating directly to the authorized payment of Prepetition Compensation, Prepetition Business Expenses, Deductions, Withholdings, Benefits or Prepetition Processing Costs. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

62. The Debtors believe that they will have sufficient funds to pay all Prepetition Compensation, Prepetition Business Expenses, Deductions, Benefits, Withholdings and Prepetition Processing Costs, to the extent described herein, as such amounts become due in the ordinary course of their businesses.

**E. Motion for Authorization to Pay Prepetition Sales, Use and Other Taxes**

63. The Debtors seek authority to pay, in their discretion, all prepetition sales and use taxes ("Sales and Use Taxes") in the ordinary course of business. In connection with the normal operation of their business, the Debtors may incur use taxes and collect sales taxes from their customers on behalf of various taxing authorities for payment to such taxing authorities on a periodic basis. I have been informed by counsel that the Sales and Use Taxes constitute so-called "trust fund" taxes which are required to be collected from third parties and held in trust for payment to the Taxing Authorities. Thus, neither the Debtors, nor their creditors, would have any interest in the Sales and Use Taxes. Thus, the Court should grant the Motion and authorize the Debtors to pay the Sales and Use Taxing Authorities as they come due.

64. In addition, inability to pay the Sales and Use Taxes may divert the attention of the Debtors' officers and directors from the chapter 11 process and the contemplated sales. In states that have laws providing that Sales and Use Taxes constitute "trust fund" taxes, officers and directors of the collecting entity may be held personally liable if the Debtors do not make timely payments and may be subject to collection actions and/or lawsuits.

65. Finally, the Debtors believe that some of the Taxing Authorities may cause the Debtors to be audited if the Sales and Use Taxes are not paid forthwith. Such audits also could unnecessarily divert the Debtors' attention away from the chapter 11 process.

66. The Debtors believe that there will be no harm to their estates or creditors from the payment of the prepetition Sales and Use Taxes since such taxes are generally entitled to priority status under the Bankruptcy Code and, therefore, must be paid in full under any plan proposed by the Debtors. Thus, the payment of the Sales and Use Taxes at this time only affects the timing of the payment and does not prejudice the rights of other creditors.

**F. Motion for Authorization to Pay Regulatory Fees and Related Charges**

67. In the ordinary course of business, the Debtors pay federal, state and municipal regulatory and business license assessments to various Regulators. These include mandatory fees paid to the Federal Communications Commission for interstate telephone relay services, interstate provider fees, and contributions to a universal service fund and, on the state level, similar fees for state universal funds, state telecom relay charges and right of ways fees. The Debtors also pay various federal and state regulatory fees and assessments for permission from the relevant Regulators (particularly state public utility commissions) to deliver common carrier services. Additionally, the Debtors are required to pay business license fees and assessments for the right to operate in various municipal jurisdictions throughout the United States.

68. In order to protect and preserve the value of the Debtors' business and continue the Debtors' operations, the Debtors request authority to pay Regulator Claims in the ordinary course of business. The Debtors also request that all applicable banks and other financial institutions be authorized and directed to receive, process, honor and pay any and all checks drawn on the Debtors' accounts to honor the Regulator Claims, whether such checks were presented prior to or after the Petition Date.

69. I have been informed that if Regulator Claims are not paid, various federal, state, and municipal authorities or agencies are likely to seek to take adverse action against the Debtors based upon purported regulatory and police powers that may not be subject to the automatic stay. In addition, preserving on-going good standing with such authorities is vital to the Debtors' ability to continue their operations and conclude a chapter 11 sale process. Accordingly, the Debtors submit that paying the Regulator Claims is in the best interests of their estates.

**G. Motion for Order Deeming Utilities Adequately Assured and Establishing Procedures for Requesting Further Assurance**

70. In the ordinary course of their businesses, the Debtors incur expenses for utility services provided by third party providers (the "Utility Companies" and "Services", respectively), the continuation of which is essential to the continued existence of the core functions of the Debtors' business. It is therefore appropriate that this Court enter orders prohibiting the Utility Companies that provide Services from altering, refusing or discontinuing services on account of prepetition invoices, deeming the Utility companies to be adequately assured of future performance and the related orders requested by the "Utility Motion."

71. In connection with the operation of their businesses and management of their properties, Touch America obtains electricity, telephone, telecommunications and similar services (collectively, the "Utility Services") from the various Utility Companies.<sup>2</sup>

72. Without continuing uninterrupted Utility Services, Touch America would be forced to close its facilities, terminate its employees, and cease operations. Thus, the relief requested by the Utility Motion is essential for the Debtors, their estates and their creditors.

73. Touch America submits that the Utility Companies are provided with adequate assurance based upon (a) Touch America's belief that the Debtors are able to pay for postpetition services on a current basis and (b) the Utility Companies' entitlement to an administrative expense claim for any unpaid postpetition service obligations.

74. Requiring Touch America to provide additional security deposits on account of its Utility Services would be burdensome. Even negotiating with the Utility Companies would be costly and result in Touch America's key personnel devoting a significant amount of time and energy to such negotiations that should instead be channeled into preserving Touch America's value.

75. Accordingly, Touch America requests that (a) it not be required to provide any or additional deposits to the Utility Companies, (b) the Utility Companies be prohibited from drawing upon any existing cash security deposit, surety bond, or other form of security that may be held by them to secure future payment for Utility Services and (c) the procedures set forth in

<sup>2</sup> Touch America hereby reserves the right to recharacterize an entity described in the Utility Motion as a Utility Company if upon further examination such entity is not in fact a Utility Company. To the extent that Touch America has contracts with any Utility Company, this Motion should be deemed as a motion seeking to enforce Touch America's rights under such contracts; *provided, however*, that Touch America reserves the right to assume or reject such contracts at a later date.



the Utility Motion be implemented to provide a mechanism for the Utility Companies to request additional assurance of future payment from Touch America.

76. Because uninterrupted utility service is vital to the continued operation of Touch America's businesses and, consequently, to the success of these chapter 11 cases, the relief requested in the herein is necessary and in the best interests of Touch America's estates and creditors.

#### **H. Motion for Authorization to Honor Customer Programs and Practices**

77. In the ordinary course of their businesses, the Debtors may receive pre-payments from its customers prior to providing services (the "Customer Deposits"). The Debtors also review and correct billing errors in their customer accounts. In the event of an overcharge, the customer's account is either credited or a refund is issued ("Billing Adjustments"). Such Billing Adjustments are typically made at least two months subsequent to the error being identified. After a customer terminates its relationship with the Debtors, any necessary billing adjustments are made and the sums owed to the customer are promptly refunded.

78. The Debtors respectfully request authority to, in their sole discretion, continue honoring Customer Deposits and Billing Adjustments (collectively, "Customer Obligations"), including prepetition Customer Obligations, in the ordinary course of their businesses.

79. The viability of the Debtors' businesses and thus, their ability to conclude a successful sale of their assets depends to a large extent upon the loyalty and confidence of their customers. Any delay in honoring or paying Customer Obligations could severely and irreparably impair the Debtors' customer relations at a time when the loyalty and support of those customers are extremely critical. To the extent that the Debtors' obligations to pay

Customer Obligations arise after the Petition Date, those obligations may give rise to administrative expense claims on the part of the Debtors' customers. Therefore, honoring these obligations arguably will not result in a large incremental expenditure of estate funds. By contrast, the Debtors believe that granting clear authority to honor Customer Obligations will significantly enhance the confidence of the Debtors' customers in the Debtors' continued performance under their customer agreements. Accordingly, to preserve the value of their businesses, the Debtors request authority, in their sole discretion, to continue honoring or paying all Customer Obligations owing to their customers without interruption or modification. In addition, to provide necessary assurances to the Debtors' customers on a going-forward basis, the Debtors request authority to continue honoring or paying all Customer Obligations owing to customers that arise from and after the Petition Date in the ordinary course of the Debtors' businesses.

80. The Debtors further request that all applicable banks and other financial institutions be authorized and directed, when requested by the Debtors, in their sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' accounts in respect of Customer Obligations, whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that each of these checks can be readily identified as relating directly to the authorized payment of Customer Obligations. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

#### **I. Interim Approval of Postpetition Financing**

81. Following extensive negotiations with certain financial institutions, the Debtors and WLR Recovery Fund II, L.P. (the "Lender") have agreed to the terms of postpetition

secured financing (the "DIP Financing"), up to an aggregate principal amount not to exceed \$5,000,000 (the "Commitment").

82. The Debtors have determined that the DIP Financing is necessary for the Debtors to operate their businesses in chapter 11 and to complete the contemplated sale process. Because the Debtors' existing cash on hand and projected operating revenues may not be sufficient to fund their operations until a sale closes, the Debtors concluded that obtaining a firm commitment for postpetition financing at the outset of these cases is necessary and in the best interests of these estates.

83. It is essential to the continued operation of the Debtors' businesses that they have access to adequate postpetition financing to service their customers and continue their business operations pending a sale. In order to obtain maximum value for their assets, it is necessary that the Debtors maintain a viable business that provides expected services to their customers. The failure to have this liquidity available or to have these parties cooperate fully at this time, as well as any resulting loss of customer patronage, could severely impair the Debtors' ability to maximize the value of their estates through a chapter 11 sale. Prior to the Petition Date, the Debtors solicited postpetition financing proposals from other lenders, but were unable to obtain postpetition financing in the form of unsecured credit allowable as an administrative expense or unsecured claim.

84. The Debtors therefore determined, in the exercise of their sound business judgment, that the proposal for the DIP Financing provided by the Lender is the most favorable under the circumstances and addresses the Debtors' present needs.

85. Before agreeing to the terms of the DIP Financing, the Debtors conducted vigorous and lengthy, arm's-length and good faith negotiations, but were unable to obtain more

favorable terms from the Lender than the terms set forth in the Loan Agreement and related documents (collectively, the "Loan Documents").

86. The Debtors therefore request that the Court approve the DIP Financing on an interim basis and schedule a hearing for final consideration of the DIP Financing terms.

**J. Conclusion**

87. For all of the reasons stated above and in each of the First Day Motions, the Debtors respectfully request that the First Day Motions be approved.

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Respectfully Submitted,



Jerold P. Pederson  
Chief Financial Officer

**File a First Day Motion:**

03-11915 Touch America Holdings, Inc.

**U.S. Bankruptcy Court**

**District of Delaware**

**Notice of Electronic Filing**

The following transaction was received from Luke, Maureen D. entered on 6/19/2003 at 9:24 PM EDT and filed on 6/19/2003

**Case Name:** Touch America Holdings, Inc.

**Case Number:** 03-11915

**Document Number:** 4

**Docket Text:**

*Affidavit in Support of Chapter 11 Petitions and First Day Motions and Applications Filed By Touch America Holdings, Inc. (Luke, Maureen)*

The following document(s) are associated with this transaction:

**Document description:Main Document**

**Original filename:**N:\Bankruptcy\Touch America\declsupp-BK.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=983460418 [Date=6/19/2003] [FileNumber=1671061-0]  
[253f532e2c572ad89b78ec3c0f5384f5c8b125e4acb9942f4ecd0f5ed2086a3b9f69  
b6cb55430a42c171aef09c209c252430c37dfcc0bd6a1207d50387bed453]]

**03-11915 Notice will be electronically mailed to:**

Maureen D. Luke bankruptcy@ycst.com

United States Trustee USTPREGION03.WL.ECF@USDOJ.GOV

**03-11915 Notice will not be electronically mailed to:**

Robert S. Brady  
Young Conaway Stargatt & Taylor LLP  
The Brandywine Bldg.  
1000 West Street, 17th Floor  
PO Box 391  
Wilmington, DE 19899-0391  
bankruptcy@ycst.com

**EXHIBIT B**

**Federal Communications Commission****Interstate Telephone Service Provider Regulatory Fee**

Approved by OMB

3060-0949

This packet contains the 2003 FCC Regulatory Fee Worksheet Form 159-W and a Remittance Advice Form 159. The FCC Form 159-W worksheet below has been completed using information from your previously submitted FCC Form 499-A. If any of this information is incorrect, please enter the correct figures on the blank worksheet enclosed and recalculate your regulatory fee. If all FCC regulatory fees that you owe total less than \$10, you are not required to file or remit payment. Otherwise, remit the fee either with this page, or with a completed Remittance Advice Form 159 and a correct Regulatory Fee Worksheet FCC 159-W.

**Attention:**

Filing must be received by September 24, 2003. See Public Notice.

1397 Touch America, Inc.  
130 N. Main St.  
  
Butte, MT 59701

Block (23A) - FCC Call Sign/Other ID

[Filer 499 ID] - [Fee Year]

808428-2003

Block (24A) - Payment Type Code

0372

Block (25A) - Quantity

[Your regulatory fee base]

\$46,668,349.00

Block (27A) - Total Fee

\$92,870.01

Block (28A) - FCC CODE 1

[Interstate &amp; Intl. end-user revenues]

\$46,668,349.00

Block (29A) - FCC CODE 2

[excluded interstate end-user revenues]

\$0.00

If the revenue information on this page is correct, you may sign in Block (30) and submit this page in lieu of a separate Remittance Advice Form 159 and Form 159-W Regulatory Fee Worksheet

Block (22) - Applicant TIN

81-0424592

Please Verify

TIN and FRN

Block (21) - Applicant FRN - CORESID

0003-7818-53

**FCC Form 159-W Regulatory Fee Worksheet (based on your FCC Form 499-A filing)**

Calendar year 2002 revenue information shown in whole dollars

1	Service provided by U.S. carriers that both originates and terminates in foreign points. FCC Form 499-A Line 412 (e)	\$0.00
2	Interstate end-user revenues from all telecommunications services. FCC Form 499-A Line 420 (d)	\$29,661,303.00
3	International end-user revenues from all telecommunications services except international-to-international. FCC Form 499-A Line 420 (e)	\$17,007,046.00
4	Total interstate and international end-user revenues (Sum of Lines 1, 2 and 3) Note: also enter this number on Block (28A) - "FCC Code 1".	\$46,668,349.00
5	End-user interstate mobile service monthly and activation charges. FCC Form 499-A Line 409 (d)	\$0.00
6	End-user international mobile service monthly and activation charges. FCC Form 499-A Line 409 (e)	\$0.00
7	End-user interstate mobile service message charges including roaming charges but excluding toll charges. FCC Form 499-A Line 410 (d)	\$0.00
8	End-user international mobile service message charges including roaming charges but excluding toll charges. FCC Form 499-A Line 410 (e)	\$0.00
9	End-user interstate satellite service. FCC Form 499-A Line 416 (d)	\$0.00
10	End-user international satellite service. FCC Form 499-A Line 416 (e)	\$0.00
11	Surcharges on mobile and satellite services identified as recovering universal service contributions and included in Line 403 (d) or 403 (e) on your FCC Form 499-A. [Note: you may not include surcharges applied to local or toll services, nor any surcharges identified as intrastate surcharges.]	\$0.00
12	Interstate and international revenues from resellers that do not contribute to USF. Form 499-A Line 511 (b)	\$0.00
13	Total excluded end-user revenues. (Sum Lines 5 through 12.) Note: also enter this number on Block (29A) - "FCC Code 2".	\$0.00
14	Total subject revenues. (Line 4 minus Line 13) Note: also enter this number on Block (25A) - "Quantity".	\$46,668,349.00
15	Interstate telephone service provider fee factor	0.00199
16	2001 Regulatory Fee (Line 14 times Line 15)* Note: also enter this number on Block (27A) - "Total Fee"	\$92,870.01

\* You are exempt if you owe less than \$10 for all FCC reg. fees. If the above figures are correct, you may certify and use this page in lieu of completed Forms 159 & 159-W.

Block (30) -

I, Kevin J. Papp CERTIFY under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. (Signature) Kevin J. Papp (Date) 9/23/2003

(please print)

☐ MasterCard ☐ Visa ☐ Discover ☐ AmEx Credit Card # \_\_\_\_\_ Expir. Date \_\_\_\_\_

I hereby authorize the FCC to charge my credit card above for the services/authorizations herein described

<See Public Notice for other payment options.> (Signature) \_\_\_\_\_ (Date) \_\_\_\_/\_\_\_\_/2003

If the above revenue data does not correspond to your 499-A filing, please contact the Form 499 Data Collection Agent at 973-560-4460

Attention: Filing must be received by September 24, 2003. See Public Notice.

FCC FORM 159-W

July 2001

mailed  
9/23/2003  
FED E  
004 n14



READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDINGFEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICEApproved by OMB  
3060-0399  
Page 1 of 1

(1) LOCK BOX # <b>358835</b>		SPECIAL USE ONLY	
SECTION A - PAYER INFORMATION		FCC USE ONLY	
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) <b>Touch America, Inc.</b>		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) <b>92,870.01</b>	
(4) STREET ADDRESS LINE NO. 1 <b>130 North Main Street</b>			
(5) STREET ADDRESS LINE NO. 2			
(6) CITY <b>Butte</b>		(7) STATE <b>MT</b>	(8) ZIP CODE <b>59701</b>
(9) DAYTIME TELEPHONE NUMBER (include area code) <b>(406) 497-5436</b>		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) <b>0003-7818-53</b>		(12) FCC USE ONLY	
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE. IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME			
(14) STREET ADDRESS LINE NO. 1			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY		(17) STATE	(18) ZIP CODE
(19) DAYTIME TELEPHONE NUMBER (include area code)		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN)		(22) FCC USE ONLY	
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID <b>808428-2003</b>	(24A) PAYMENT TYPE CODE <b>0372</b>	(25A) QUANTITY <b>46,668,349.00</b>	
(26A) FEE DUE FOR (PTC)	(27A) TOTAL FEE <b>92,870.01</b>	FCC USE ONLY	
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY	
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
CERTIFICATION STATEMENT I, <b>Robert J. Foley</b> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.			
SIGNATURE <b>Robert J. Foley</b>		DATE <b>9/23/03</b>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	



Non-Public For Internal Use Only

## RAMIS ACCOUNT RECEIVABLES

### Check Number Query Report

Page 1 of 1

Thursday, November 06, 2003 08:12 AM

FEE Control Number : 0309258835583001

Customer FRN : 0003781853

FRN Name : Touch America, Inc.

Check Number : 292066020000

Receipt Amount : \$43,649.00

Date Received : 09/24/2003

AR012-A  
1/13/2004  
13:38:30

RAMIS ACCOUNTS RECEIVABLE - (c) DSG, Inc.  
RECEIPTS DETAIL REPORT  
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No.

PAGE 1  
1/13/2004  
13:38:30

CD NO.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560812	9/25/03	0309258835583002	0003781853	Touch America, Inc.	9/24/03	\$49,221.01

Seq: 1 Call Sign: 8084282003 FCC Code 1: FCC Code 2: Tin Number:  
PTC: 0372 QTY: 24734175 Applied Amt: 49221.01  
Applicant Name: TOUCH AMERICA INC  
Address: 130 NORTH MAIN STREET

Total Applied: \$49,221.01 Total Receipt: \$49,221.01

AR012-A  
1/13/2004  
13:38:59

RAMIS ACCOUNTS RECEIVABLE - (C) DSG, Inc.  
RECEIPTS DETAIL REPORT  
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No.

PAGE 1  
1/13/2004  
13:38:59

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560812	9/25/03	0309258835583001	0003781853	Touch America, Inc.	9/24/03	\$43,649.00

Seq: 1 Call Sign: 8084282003 FCC Code 1: FCC Code 2: Tin Number:  
PTC: 0372 QTY: 21934170 Applied Amt: 43649.00  
Applicant Name: TOUCH AMERICA INC  
Address: 130 NORTH MAIN STREET

Total Applied: \$43,649.00 Total Receipt: \$43,649.00